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9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**
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12 ARMINDA O. ALAAN,

13 Plaintiff,

14 vs.

14 ASSET ACCEPTANCE LLC,

15 Defendant.

CASE NO. 10cv328 WQH (BLM)

ORDER

16 HAYES, Judge:

17 The matters before the Court are the Motion for Summary Judgment filed by Defendant
18 Asset Acceptance LLC (“Asset”) (ECF No. 10), and the Ex Parte Motion to Continue
19 Defendant’s Motion for Summary Judgment filed by Plaintiff Arminda O. Alaam (ECF No.
20 13).

21 **I. Background**

22 On February 10, 2010, Alaam initiated this action by filing a Complaint against Asset.
23 (ECF No. 1.) On April 15, 2010, Alaam filed a First Amended Complaint. (ECF No. 3).

24 **A. Allegations of the First Amended Complaint**

25 In November 1999, Alaam incurred a consumer debt to Citibank. *Id.* ¶ 7. Alaam
26 defaulted on the debt. *Id.* ¶ 8.

27 On February 19, 2009, Asset filed a lawsuit against Alaam in California state court
28 which sought to collect \$3,991.42 plus interest and attorney’s fees. Asset alleged in the state

1 court complaint that Asset was the “Assignee of Citibank.” *Id.* ¶ 11. “[T]he Asset v. Alaan
 2 [state court] complaint ... misrepresents that the debt was assigned to Asset.” *Id.* ¶ 13. “Asset
 3 misrepresented the character, amount or legal status of the debt in the Asset v. Alaan
 4 complaint.” *Id.* ¶ 14. “Asset stated in the Asset v. Alaan complaint that it was collecting
 5 \$3,991.42 as principal, however this is a misrepresentation of the principal, as the \$3,991.42
 6 figure includes fees, interest and other charges which are not part of the principal debt.” *Id.*
 7 ¶ 12.

8 Alaan alleges that Asset violated the Fair Debt Collection Practices Act, 15 U.S.C.
 9 §1692, and the Rosenthal Fair Debt Collection Practices Act, Cal. Civ. Code §1788.

10 **B. Procedural History**

11 On June 11, 2010, the Magistrate Judge issued an Order Scheduling an Early Neutral
 12 Evaluation Conference for July 21, 2010. (ECF No. 6).

13 On July 5, 2010, the parties filed a Joint Motion to Continue the Early Neutral
 14 Evaluation Conference in anticipation of Asset filing a motion for summary judgment. (ECF
 15 No. 8).

16 On July 6, 2010, the Magistrate Judge issued an Order vacating the Early Neutral
 17 Evaluation Conference and scheduling a Case Management Conference on August 13, 2010.
 18 (ECF No. 9). The Magistrate Judge ordered the parties to make their initial disclosures and
 19 lodge a joint discovery plan by August 6, 2010.

20 On August 9, 2010, Asset filed the Motion for Summary Judgment. (ECF No. 10).
 21 Asset contends that it is entitled to summary judgment because:

22 The undisputed evidence shows that, contrary to Alaan’s assertions, Asset
 23 acquired Alaan’s unpaid Citibank account pursuant to a Purchase and Sale
 24 Agreement; Asset never said it was seeking to collect ‘principal’ in its collection
 25 complaint against Alaan, but even if it had, this would not state a claim under
 26 the FDCPA, given the Ninth Circuit’s recent ruling in *Donohue v. Quick Collect, Inc.*, 592 F.3d 1027 (9th Cir. 2010); Asset did not misrepresent its right to
 request attorneys’ fees; and Asset prayed for interest at a rate substantially
 below the interest rate imposed by the original creditor, Citibank, as reflected in
 the monthly account statements sent to Alaan.

27 *Id.* at 2.

28 On August 13, 2010, the Magistrate Judge issued a Case Management Conference

1 Order regulating discovery and other pre-trial proceedings. (ECF No. 12). In the order, the
2 Magistrate Judge set discovery guidelines and ordered the parties to complete discovery by
3 March 15, 2011.

4 On August 24, 2010, Alaan filed the Ex Parte Motion to Continue Defendant's Motion
5 for Summary Judgment. (ECF No. 13). Alaan contends:

6 As Asset's MSJ was filed the same day the initial disclosures were received by
7 mail service and before the parties engaged in discovery, Asset's MSJ should be
8 continued until discovery is conducted to allow Alaan to obtain evidence (both
9 documentary and testimonial) which may be necessary to oppose Asset's MSJ.

10 (ECF No. 13-1 at 5). Alaan contends that Asset failed to produce any documents in its initial
11 disclosures and asserts that she needs more time to obtain and analyze documents and to
12 interview and depose key witnesses. *See id.* at 8. Alaan submits an affidavit from her counsel
13 listing the discovery which Alaan anticipates conducting "in preparation to address each of the
14 arguments and issues raised by Asset's [Motion for Summary Judgment]." (Lester Decl. ¶ 9,
15 ECF No. 13-2). Among other things, Alaan's counsel states that he anticipates "[d]eposing
16 percipient witnesses and persons most knowledgeable acting on behalf of Asset including Ken
17 Proctor (Asset's affiant in this MSJ) and Elizabeth Gamache (Asset's paralegal, custodian of
18 records, legal administrator and designated corporate representative), and those acting on
19 behalf of Citibank including its custodian of records and designated corporate representative
20 to show that their testimony will establish that representations in Asset's complaint had no
21 admissible evidentiary basis." *Id.* ¶ 9(d).

22 On September 2, 2010, Asset filed an opposition to the Ex Parte Motion to Continue
23 Defendant's Motion for Summary Judgment. (ECF No. 17). Asset contends that Alaan's
24 motion should be denied because Alaan obtained the documents she is currently seeking during
25 the course of the state court action. Asset contends that "[d]epositions are not needed" and
26 Alaan's "speculation" concerning what deponents might say is not sufficient to warrant a
27 continuance of the Motion for Summary Judgment. *Id.* at 9.

28 **II. Discussion**

Federal Rule of Civil Procedure 56(f) provides that if "a party opposing the motion [for
summary judgment] shows by affidavit that, for specified reasons, it cannot present facts


1 essential to justify its opposition, the court may: (1) deny the motion; (2) order a continuance
2 to enable affidavits to be obtained, depositions to be taken, or other discovery to be
3 undertaken; or (3) issue any other just order.” Fed. R. Civ. P. 56(f). “Where ... a summary
4 judgment motion is filed ... early in the litigation, before a party has had any realistic
5 opportunity to pursue discovery relating to its theory of the case, district courts should grant
6 any Rule 56(f) motion fairly freely.” *Santa Fe R.R. Co. v. Assiniboine & Sioux Tribes of the*
7 *Ft. Peck Reservation*, 323 F.3d 767, 773-74 (9th Cir. 2003) (citing *Metabolife Int’l, Inc. v.*
8 *Wornick*, 264 F.3d 832, 846 (9th Cir. 2001) (“Although Rule 56(f) facially gives judges the
9 discretion to disallow discovery when the non-moving party cannot yet submit evidence
10 supporting its opposition, the Supreme Court has restated the rule as requiring, rather than
11 merely permitting, discovery ‘where the non-moving party has not had the opportunity to
12 discover information that is essential to its opposition.’”) (quoting *Anderson v. Liberty Lobby,*
13 *Inc.*, 477 U.S. 242, 250 (1986)); *Wichita Falls Office Assocs. v. Banc One Corp.*, 978 F.2d 915,
14 919 (5th Cir. 1992) (Rule 56(f) “continuance of a motion for summary judgment for purposes
15 of discovery should be granted almost as a matter of course unless the non-moving party has
16 not diligently pursued discovery of the evidence.”)).

17 Asset filed the Motion for Summary Judgment three days after it made its initial
18 discovery disclosures and four days prior to the Case Management Conference. Although
19 Asset has shown that Alaan received some documentary discovery during the state court
20 litigation, Alaan has submitted an affidavit identifying additional discovery which Alaan
21 anticipates conducting in this action. Given the early stage of this litigation, the Court finds
22 that Alaan has satisfied the requirements for receiving a continuance pursuant to Rule 56(f).
23 The Ex Parte Motion to Continue Defendant’s Motion for Summary Judgment is granted. As
24 much as practicable, Alaan shall tailor its initial discovery toward the issues raised in the
25 Motion for Summary Judgment. *Cf. Santa Fe R.R. Co.*, 323 F.3d at 775 (“[T]he district court
26 may tailor limited discovery before again entertaining a motion for summary judgment.”).
27 Asset’s Motion for Summary Judgment is denied without prejudice to renew the motion upon
28 the completion of limited discovery.

1 **III. Conclusion**

2 IT IS HEREBY ORDERED that the Ex Parte Motion to Continue Defendant's Motion
3 for Summary Judgment is GRANTED. (ECF No. 13). The Motion for Summary Judgment
4 is DENIED without prejudice to renew the motion upon the completion of limited discovery.
5 (ECF No. 10).

6 DATED: October 7, 2010

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8 **WILLIAM Q. HAYES**
9 United States District Judge